

United States Department of Agriculture  
Research, Education, and Economics

ARS □ ERS □ NASS □ NIFA □

*Policies and Procedures*

**Title:** Approval for Acquisition Ratifications

**Number:** 212.16 v9

**Date:** November 20, 2015

**Originating Office:** Acquisition and Property Division

**This Replaces:** ARS 212.16 v8 dated June 10, 2015

**Distribution:** ARS Business Service Center (BSC) Directors, BSC Acquisition Branch Chiefs, APD, ERS, NASS, and NIFA.

This P&P outlines procedures for Approving Acquisition Ratifications.
---

1. Purpose.....	0
2. Definitions.....	0
3. Delegation of Authority .....	0
4. Regulatory Requirements.....	0
5. Procedures for Ratification Actions Approved at the Contracting Office Level.....	1
6. Review of Ratification Actions Approved at the Contracting Office Level.....	1
7. Ratification Actions Requiring HCAD Approval.....	1
8. Office of General Counsel (OGC) Concurrence.....	2
9. Summary of Responsibilities.....	5

## **1. Purpose**

It is illegal for anyone other than a properly appointed contracting officer, ordering officer or cardholder to make a purchase for the Government.

Personnel without procurement authority who order supplies or services, who attempt to change the terms of an existing contract, or who commit the Government to pay a vendor for anything received, may be held to disciplinary action and may be responsible for payment.

Such actions are called unauthorized commitments. This also applies to contracting officers who exceed the limitations stated on their warrant.

This P&P provides guidance on processing ratifications of unauthorized commitments within REE.

## **2. Definitions**

**Ratification.** The approval of an unauthorized commitment by an official who has the authority to do so.

**Unauthorized commitment.** An agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.

## **3. Delegation of Authority**

The Agriculture Acquisition Regulation (AGAR) 401.602-3 authorizes the Head of the Contracting Activity (HCA) and HCA Designee (HCAD) for REE to delegate ratification authority to qualified individuals at the Chief of the Contracting Office level. Accordingly, the following individuals are hereby designated as “Ratifying Officials” and delegated the authority to ratify unauthorized actions:

- Chief, Acquisition Branch, Business Service Center (BSC)

**Note:** Ratification of unauthorized actions over \$150,000 require prior approval from the HCAD.

The Ratifying Official must serve as the initial Contracting Officer on the contract or order. After award, another Contracting Officer with sufficient warrant authority may be appointed to administer the contract or order.

## **4. Regulatory Requirements**

All ratification actions are to be processed in accordance with Federal Acquisition Regulation (FAR) 1.602-3 and AGAR 401.602-3. The authority to ratify an authorized commitment may only be exercised when the conditions cited in FAR 1.602-3(c) exist. Procedures cited in AGAR 401.602-3 shall be followed upon learning of an unauthorized commitment.

## **5. Procedures for Ratification Actions Approved at the Contracting Office Level**

Enclosure 2, "Ratifying Official's Determination to Ratify Unauthorized Commitment," should be completed by the individual in the Contracting Office who is recommending the ratification and signed by the Ratifying Official for each ratification action processed. This enclosure includes the ratification documentation required by FAR 1.602-3 (Enclosure 1). Enclosure 3 provides a sample letter which should be forwarded upon approval of the ratification action. Prior to ratification approval, the Ratifying Official shall determine the need for Office of General Counsel (OGC) concurrence in accordance with No. 8 of this P&P. If the unauthorized commitment is approved, the Ratifying Official shall serve as the initial Contracting Officer and sign the purchase order/contract (e.g. OF-347, SF-26, SF-33, SF-1449) that ratifies the action. Additionally, the contract or order shall state "This is a ratification of an unauthorized commitment".

If ratification of the action is not justifiable, the Ratifying Official must provide the person who made the unauthorized commitment, the recommending official, and the unauthorized contractor with an explanation of the decision not to ratify. Cases that are not ratifiable under FAR 1.602-3 may be subject to resolution as recommended by the Government Accountability Office under its claim procedures, or as authorized by FAR Part 50 as "extraordinary contractual actions."

The entire ratification process shall be completed within 20 business days from the time the unauthorized commitment has been identified.

## **6. Review of Ratification Actions Approved at the Contracting Office Level**

Ratification actions approved at the Contracting Office level shall be submitted to the APD, Acquisition Programs and Oversight Branch (APOB) at [APOB@ars.usda.gov](mailto:APOB@ars.usda.gov). This includes a completed copy of Enclosure 1 as well as OGC's concurrence (if applicable) to ensure compliance with FAR and AGAR requirements.

## **7. Ratification Actions Requiring HCAD Approval**

Unauthorized actions greater than \$150,000 require approval by the HCAD prior to ratification by the Ratifying Official. Such actions must be forwarded to the HCAD, APD, by the cognizant Branch Chief for approval and must include evidence of compliance with FAR and AGAR, as cited above. A completed copy of Enclosures 1 and 2, "Ratification of Unauthorized Commitments" and "Ratifying Official's Determination to Ratify Unauthorized Commitment," must be forwarded to the HCAD for approval. If the unauthorized commitment is approved by

the HCAD, the Ratifying Official shall sign the purchase order/contract (e.g. OF-347, SF-26, SF-33, SF-1449) that ratifies the action.

If ratification of the action is not approved by the HCAD, an explanation of the decision not to ratify will be sent to the Ratifying Official.

## **8. Office of General Counsel (OGC) Concurrence**

In accordance with FAR Part 1.602-3(c)(5) and Departmental procedures, the following procedures have been established for REE:

- Ratifications under the Simplified Acquisition Threshold (SAT): The Ratifying Official will determine whether consulting OGC is needed for ratification concurrence based on the complexity of the issues involved in each particular instance.
- Ratifications over the SAT: OGC concurrence is required. This will be coordinated by the Acquisition Programs and Oversight Branch (APOB).

## **9. Summary of Responsibilities**

**Area Director (location office actions) / Division Director/Business Service Center Director (AFM actions) / Division Director (ARS HQ actions) / Senior Leader GS-15 or equivalent (ERS, NASS, NIFA actions)**

- Ensures AFM/location offices/headquarters take positive action to preclude, to the maximum extent possible, the need for ratification actions.
- When reviewing the written statement of facts prescribed by AGAR 401.602-3(c) (3):
  - verifies its completeness and accuracy.
  - signs the completed written statement of facts signifying that ratification of the unauthorized commitment is recommended.

## **HCAD**

- When serving as the approving official, reviews the completed copies of Enclosures 1 and 2, “Ratification of Unauthorized Commitments” and “Ratifying Official’s Determination to Ratify Unauthorized Commitment,” as well as OGC’s concurrence to determine if ratification is justified and proper.

- If ratification is adequately justified and proper, signs the determination located in Enclosure 2 approving the unauthorized commitment to be ratified by the Ratifying Official.
- If ratification is not justifiable, provides an explanation of the decision not to ratify to the Ratifying Official. If there are any questions concerning this matter, contacts the Office of General Counsel and the Human Resources Division.
- Provides counsel to the BSC-Acquisition Branch Chiefs concerning non-ratifiable actions upon request.

### **BSC-Acquisition Branch Chief**

- Serves as Ratifying Official and ensures that all ratifications of unauthorized commitments are processed in accordance with FAR 1.602-3, AGAR 401.602-3, and this P&P.
- Determines need for OGC concurrence on actions below the SAT.
- When recommending that actions above \$150,000 be approved by the HCAD, ensures that Enclosures 1 and 2, “Ratification of Unauthorized Commitments” and “Ratifying Official’s Determination to Ratify Unauthorized Commitment,” are forwarded to the HCAD.
- As Ratifying Official, reviews Enclosures 1 and 2, “Ratification of Unauthorized Commitments” and “Ratifying Official’s Determination to Ratify Unauthorized Commitment,” and determines if ratification is justified and proper.
  - If ratification is adequately justified and proper, signs the determination documenting the action and the purchase order/contract that ratifies the action.
  - If ratification is not justifiable, provides the person who made the unauthorized commitment, the recommending official, and the unauthorized contractor with an explanation of the decision not to ratify. If there are any questions concerning this matter, contacts the HCAD.
- Distributes memoranda shown in Enclosure 3 upon ratification of the action.
- Provides a complete copy of Enclosures 1 and 2 as well as a copy of the OGC concurrence determination (if applicable), to APOB.
- Upon receipt of Enclosure 1 (from the person who made the unauthorized commitment) processes the ratification within 10 business days.)

## **Contract Specialist/Purchasing Agent**

When recommending that actions be ratified:

- ensures that the unauthorized official submits all records and documents concerning the commitment.
- submits a complete, written statement of facts as prescribed by AGAR 401.602-3 (C) (3).
- completes Enclosure 2, “Ratifying Official’s Determination to Ratify Unauthorized Commitment.”
- prepares the purchase order or contract document in IAS.
- forwards to the Ratifying Official for ratification.

## **Person Who Made the Unauthorized Commitment**

- Furnishes all records and documents concerning the unauthorized commitment and a complete, written statement of facts as prescribed by AGAR 401.602-3(c)(3) to the Contract Specialist/Purchasing Agent (Enclosure 1). The written statement of facts must be approved for accuracy and completeness and signed by either the Area Director (for location personnel), Division Director/BSC Director (for AFM personnel), Division Director (for ARS HQ personnel, or Senior Leader GS-15 or equivalent (for ERS, NASS or NIFA personnel). This documentation shall be submitted to the Ratifying Official within 10 business days from the time the unauthorized commitment is identified.
- If the employee who made the unauthorized commitment is no longer with REE, the former employee’s supervisor provides the information to the Contract Specialist, along with the name of the employee who made the unauthorized commitment.

**MICHAEL BARNES**  
Head of the Contracting Activity Designee  
Acquisition and Property Division

3 Enclosures



**United States Department of Agriculture**

Research, Education, and Economics  
Agricultural Research Service

---

**RATIFICATION OF UNAUTHORIZED COMMITMENTS**

---

**TO:** "INSERT NAME" , "INSERT TITLE" (PERSON WHO MADE  
UNAUTHORIZED COMMITMENT)

**FROM:** "INSERT NAME" , CONTRACT SPECIALIST

**SUBJECT:** UNAUTHORIZED COMMITMENT OF GOVERNMENT FUNDS  
PR #"CLICK HERE AND TYPE PROCUREMENT REQUEST NUMBER"  
FOR "CLICK HERE AND TYPE PROJECT TITLE"  
WITH "INSERT CONTRACTOR NAME"

**DATE:** \_\_\_\_\_

**CC:** "CLICK HERE AND TYPE NAME"

---

1. Your requisition to provide services/supplies is being returned to you for your action. It is an unauthorized commitment as defined by FAR 1.602-3. Specifically, the services performed were rendered without a valid award by a contracting officer. The Federal employee who made the commitment lacked the legal authority to bind the Government.
2. For this action to be ratified (i.e., approved by a contracting officer), the following information must be provided. Failure to ratify an unauthorized commitment will result in the vendor not being paid, and the individual who is responsible for the commitment may be held personally liable.
  - a. Each item must be addressed separately (See Template Below)
    1. What bonafide Government requirement necessitated the commitment?
    2. Why was a contracting officer not used?
    3. Why was the vendor selected? Provide a list of sources and prices considered.
    4. A description of the work to be performed or the products to be furnished.
    5. The estimated or agreed price and a rationale for why the price is fair and reasonable.
    6. Whether an appropriation is available for the work.



7. Whether performance has begun.
8. Any other pertinent facts.
9. If the action exceeds the micro-purchase threshold and only one source was solicited, you must include a Justification for a Sole Source, explaining why only one vendor can supply the goods or services.
10. What steps are being taken to prevent this from occurring again?

Please attach all other relevant documents, including orders, invoices, or other evidence of this transaction.

- b. The above information must be signed by the individual who initiated the unauthorized commitment and approved by the individual's Area Director (location office actions), Division Director/BSC Director (for AFM actions), Division Director (for ARS HQ actions) or Senior Leader GS-15 or equivalent (for ERS, NASS or NIFA actions), verifying the accuracy and completeness of the documentation.
3. Upon our receipt of the above information, this office will determine whether ratification is proper. Approved actions will result in a signed award by the Ratifying Official. Disapproved actions will be returned to the initiating individual's Department for further action.
4. Questions may be directed to:

"Insert Name"

Contract Specialist

USDA/ARS/\_BSC-AB

"Insert Address Line 1"

ph: "(XXX) XXX-XXXX"



Research, Education, and Economics  
Agricultural Research Service

---

---

**RATIFICATION OF UNAUTHORIZED COMMITMENTS**

---

---

1. What bonafide Government requirement necessitated the commitment?

---

---

---

---

2. Why was a contracting officer not used?

---

---

---

---

3. Why was the vendor selected? Provide a list of sources and prices considered.

---

---

---

---

4. A description of the work to be performed or the products to be furnished.

---

---

---

---

5. The estimated or agreed price and a rationale for why the price is fair and reasonable.

---

---

---

---

6. Whether an appropriation is available for the work.

---

---

---

---

---

---

7. Whether performance has begun.

---

---

---

---

8. Any other pertinent facts.

---

---

---

---

9. If the action exceeds the micro-purchase threshold (>\$3,000) and only one source was solicited, you must include a Justification for a Sole Source, explaining why only one vendor can supply the goods or services.

---

---

---

---

10. What steps are being taken to prevent this from occurring again?

---

---

---

---

---

“Insert Name & Title”  
(Person Who Made Unauthorized Commitment)

---

Date

---

Area Director/Division Director/BSC Director/Senior Leader

---

Date

**Ratifying Official's Determination to Ratify Unauthorized Commitment**

**Part I – Background Information:**

1. Unauthorized Commitment by (name): \_\_\_\_\_
2. Location: \_\_\_\_\_
3. Supply/Service: \_\_\_\_\_  
\_\_\_\_\_
4. Requisition: \_\_\_\_\_ \$ \_\_\_\_\_  
Date Amount Accounting Code
5. Contracting Office: \_\_\_\_\_
6. PO/Contract Amount: \$ \_\_\_\_\_
7. Vendor: \_\_\_\_\_
8. Competition Received: \_\_\_\_\_
9. Performance/Delivery Date: \_\_\_\_\_

**Part II – Determination in Accordance with Information Required by FAR 1.602-3:**

1. Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment.  

\_\_\_\_\_/\_\_\_\_\_  
Yes No
2. Resulting contract would otherwise have been proper.  

\_\_\_\_\_/\_\_\_\_\_  
Yes No

- If sole source, provide justification.

---

---

- If greater than \$150,000 cite FAR Part 6 exemption.

---

---

3. Price Reasonableness Determination.

---

---

---

4. Payment is recommended.

\_\_\_\_/\_\_\_\_  
Yes No

5. Funds are available and were available  
at the time the unauthorized commitment  
was made.

\_\_\_\_/\_\_\_\_  
Yes No

6. The ratification is in accordance with all  
limitations described under Agency procedures.

\_\_\_\_/\_\_\_\_  
Yes No

Based on the information contained herein, ratification of this unauthorized commitment is recommended.

\_\_\_\_\_  
Ratifying Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Head of the Contracting Activity Designee (HCAD)  
(Required for Unauthorized Commitments Greater Than \$150,000)

\_\_\_\_\_  
Date



**United States Department of Agriculture**

Research, Education, and Economics  
Agricultural Research Service

**SUBJECT:** Ratification of Unauthorized  
Contract (Insert Contract Number)

**TO:** Person who Made the  
Unauthorized Commitment (Insert Name & Title)

**FROM:** (Insert Name), Acquisition Branch Chief  
(Insert Business Service Center)

I have reviewed the information submitted by \_\_\_\_\_ and have ratified your unauthorized act of purchasing supplies/services to \_\_\_\_\_.

Your unauthorized act is a violation of the following regulations:

- Federal Acquisition Regulation (FAR) 1.601 – “Contracts may be entered into and signed on behalf of the Government only by contracting officers.”
- FAR 1.602-1(b) – “No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.”

While I have ratified this act (enclosed), you are advised that future procurements and/or contractual actions in which you become involved must be submitted to the procurement office for execution. It is recommended that you review prohibited conduct as covered in the Employee Handbook, Appendix 1 (7 CFR 0.725-11(a)(5), FAR 1-602-3, and AGAR 401.602-3).

Because of Government publicity on alleged fraud, waste and abuse of Federal funds, this memorandum is provided to protect your interests and to caution you on future involvement with unauthorized procurement and/or contractual actions.

Enclosures

cc: (Insert name of Senior Supervisor of person who made the Unauthorized Commitment)